

The Orissa Gazette



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LABOUR & EMPLOYMENT DEPARTMENT

NOTIFICATION

The 21st February 2009

No. 1822—li/1(B)-94/1999(Pt.)-L. E.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Award, dated the 4th February 2009 in Industrial Dispute Case No. 205 of 2008 of the Presiding Officer, Industrial Tribunal, Bhubaneswar to whom the Industrial Dispute between the Management of Sili Culturist, Orissa, Ghatikia, Khandagiri, P. O. Bhubaneswar and their workman Shri Sanatan Bhoi was referred for adjudication is hereby published as in the Schedule below :

SCHEDULE

IN THE INDUSTRIAL TRIBUNAL, ORISSA, BHUBANESWAR

INDUSTRIAL DISPUTE CASE No. 205 OF 2008

Dated the 4th February 2009

Present :

Shri P. C. Mishra, o.s.j.s. (Sr. Branch),
Presiding Officer, Industrial Tribunal,
Bhubaneswar.

Between :

The Sili Culturist, Orissa, ... First Party—Management
Ghatikia, Khandagiri,
P. O. Bhubaneswar, Dist. Khurda.

And

Shri Sanatan Bhoi, ... Second Party—Workman
S/o Nakul Bhoi,
At Chhabalia, P. O. Daypur,
Dist. Puri.

Appearances :

For the First Party—Management ... None

For the Second Party—Workman himself ... Shri Sanatan Bhoi

AWARD

Originally, the Government of Orissa in the Labour & Employment Department had referred the following dispute for adjudication by the Presiding Officer, Labour Court, Bhubaneswar vide its Order No. 4438—li/1(B)-94/1999-L.E., dated the 24th March 2000, but subsequently it transferred the dispute to be adjudicated by the Presiding Officer, Industrial Tribunal, Bhubaneswar vide its Order No. 4138—li/21-32/2007-L.E., dated the 4th April 2008 :—

“Whether the action of the Siliculturist, Orissa (Ghatikia), Bhubaneswar by terminating the services of Shri Sanatan Bhoi, Mali with effect from the 1st November 1990 is legal and/or justified ? If not, what relief Shri Bhoi is entitled to ?”

2. The case of the workman in brief is that being engaged as a Mali he worked under the management from the 22nd October 1987 to the 22nd October 1990 on a monthly salary of Rs. 550 and such engagement of his was continuous one. It is pleaded in the statement of claim that during his continuance under the management no misconduct was alleged against him nor he was never charge-sheeted. The workman has stated that the fact of his continuous engagement under the management is admitted in the conciliation proceeding. Specifically it is pleaded that the workman having rendered continuous service, i.e. more than 240 days preceding the date of his refusal from employment with effect from the 1st November 1990, it was obligatory on the part of the management to comply the provisions of Section 25-F of the Industrial Disputes, Act before refusing him employment and non-compliance of the same renders its action illegal and unjustified. Further it is alleged that after refusing him employment, the management has engaged fresh hand in place of the workman and thus it is violated the provisions of Section 25-H of the Industrial Disputes Act. In the aforesaid premises therefore, the workman has prayed for his reinstatement in service with full back wages and other consequential service benefits.

3. The first party-management in spite of notice did not appear nor filed its written statement as a result of which it was set *ex parte* vide Order No. 7, dated the 5th September 2001.

4. In the *ex parte* hearing, the workman submitted his evidence on affidavit and proved four documents which have been marked Exts. 1 to 4.

5. In his evidence of affidavit, the workman has stated that he had performed continuous service under the management from the 22nd October 1987 till the last part of October 1990 and on the 1st November 1990, he was refused employment by the management without any reasonable cause which amounts to termination of his service. It is stated in the affidavit that since the management has not complied with the provisions of Section 25-F of the Industrial Disputes Act and further a fresh person has been engaged in his place soon after his removal, which is contrary to the provisions of Section 25-H of the Industrial Disputes Act, the action of the management cannot be said to be legal or justified. In his affidavit he has referred to Ext. 1 the copy of the counter filed by the management in the Hon'ble High Court in which the management has admitted about the engagement of the workman under it as an unskilled labourer but found to have taken the plea that the workman had voluntarily abandoned the job with effect from the 1st November 1990. Ext. 1 further reveals that another person is engaged

in place of the workman on account of his voluntary abandonment from service. Ext. 2 is the copy of the Hon'ble Court Order in O.J.C. No. 4048 of 1991 wherein the workman was directed to redress his grievance before the Orissa Administrative Tribunal. Exts. 3 and 4 are the copies of his representations addressed to the management seeking engagement under it.

6. The unchallenged evidence of W. W. No. 1 (Workman) coupled with the documentary evidence adduced by him establishes the stand of the workman that he was engaged under the management from the 22nd October 1987 till the last part of October, 1990 and he had worked for more than 240 days in the preceding calendar year. Since the management neither appeared in the dispute nor filed its written statement contesting the claim, its stand reflected in Ext. 1 that the workman left the job on his own accord cannot be believed. In view of the workman's rendering continuous service under the management, it was incumbent for the management to comply with the requirements of Section 25-F of the Industrial Disputes Act while terminating his service with effect from the 1st November 1990 and non-compliance of the same renders its action to be illegal and unjustified one. Further, the documentary evidence discloses that there has been violation of the provisions of Section 25-H of the Industrial Disputes Act by the management inasmuch as, after effecting termination of service of the workman the management has employed fresh person to carry out its work. On the face of the aforesaid evidence, therefore, there is no escape from the conclusion that the management is guilty of contravening the provisions of Sections 25-F and 25-H of the Industrial Disputes Act in the matter of terminating the services of the workman and accordingly it is held that the termination of service of the workman with effect from the 1st November 1990 is neither legal nor justified.

7. In view of the finding, as aforesaid, the workman is held entitled to reinstatement in service forthwith but in the facts and circumstances of the case he is not entitled to any back wages.

The reference is answered accordingly.

Dictated and corrected by me.

P. C. MISHRA
4-2-2009
Presiding Officer
Industrial Tribunal, Bhubaneswar

P. C. MISHRA
4-2-2009
Presiding Officer
Industrial Tribunal, Bhubaneswar

By order of the Governor

K. C. BASKE

Under-Secretary to Government